

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MARC DAY,

Petitioner

v.

C-1-02-754

ANTHONY BRIGANO, WARDEN,

Respondent

**ORDER**

This matter was referred pursuant to 28 U.S.C. § 636 to the United States Magistrate Judge for consideration and report on the Petition for Writ of Habeas Corpus filed by the petitioner pursuant to 28 U.S.C. § 2254. The matter is before the Court upon the Motion for Leave to File Objections to the Report and Recommendation of the Magistrate Judge (doc. no. 14) which was granted by this Court on April 19, 2005 (doc. no. 2005); petitioner's objections (doc. no. 16), respondent's reply (doc. no. 17); petitioner's Motion to Amend/Correct (doc. no. 18) and petitioner's tendered Amended Document (doc. no. 19). The Report and Recommendation of the United States Magistrate Judge recommended that the Petition for Writ of Habeas Corpus be dismissed.

The Motion to Amend/Correct filed by Petitioner (doc. no. 18) is not timely. The Motion requests permission to file tendered Amended Document (doc. no. 19). The issues raised in the tendered Amended Document are redundant. These issues were raised in the Petitioner's Petition. The Motion to Amend/Correct (doc. no. 18) is **DENIED**. The tendered Amended Document (doc. no. 19) is null and void.

Upon careful consideration of the petitioner's objections, and upon conducting a *de novo* review of the record, especially in light of petitioner's objections, the Court finds that petitioner's contentions have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge that petitioner's convictions and sentences are supported by sufficient evidence and do not violate the Constitution or laws of the United States.

Accordingly, the Court accepts the factual findings and legal reasoning of the Magistrate Judge and hereby **ADOPTS AND INCORPORATES BY REFERENCE HEREIN** his Report and Recommendation dated March 9, 2005. The Petition for Writ of Habeas Corpus is, therefore, **DENIED WITH PREJUDICE** and this action is hereby **DISMISSED**.

- 3 -

A certificate of appealability will not be issued with respect to petitioner's grounds for relief because petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. *See* 28 U.S.C. 2253(c); Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate whether these claims should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 323–24 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484–84 (2000)) (in turn quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

Pursuant to 28 U.S.C. §§ 1915(a), this Court certifies that an appeal from this Order would not be taken in good faith for purposes of granting petitioner leave to appeal *in forma pauperis*. *See Fed. R. App. 24(a); Kincade v. Sparkman*, 117 F.3d 949, 952 (1997).

IT IS SO ORDERED.

s/Herman J. Weber  
Herman J. Weber, Senior Judge  
United States District Court